

***United States Court of Appeals
for the Second Circuit***



APPENDIX

76 1211

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

DOCKET NO. 76-1211

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UNITED STATES OF AMERICA,

Appellee,

-against-

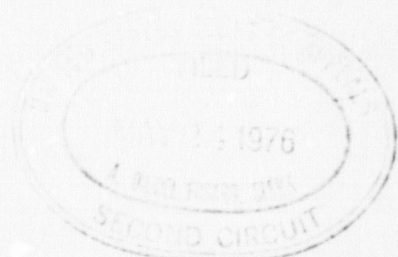
IRVING BIRNBAUM,

Appellant.

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APPENDIX



MORROW D. MUSHKIN

Attorney for Irving Birnbaum
Office And Post Office Address
600 Old Country Road
Garden City, New York, 11530
(516) 747-8522

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

ELVIN LEE BYNUM, et al.,

Defendants.

Notice of Motion

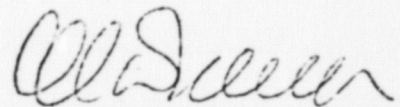
71 Cr. 1169

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PLEASE TAKE NOTICE that the undersigned will move this Court, at a stated term thereof, pursuant to Rule 35 of the Federal Rules of Criminal Procedure, for a reduction or modification of sentence for defendant, Irving Birnbaum, together with such other and further relief as to this Court shall seem just and proper.

YOURS, etc.

MORROW D. MUSHKIN
Attorney for Defendant
Birnbaum
Office and P.O. Address
600 Old Country Road
Garden City, N. Y.



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA

-v-

Affidavit

ELVIN LEE BYNUM, et al.,

71 Cr. 1169

Defendants.
-----x

STATE OF NEW YORK)
COUNTY OF NASSAU) SS.:

MORROW D. MUSHKIN, being duly sworn, deposes and says: He is the attorney for the defendant, Irving Birnbaum, herein.

The defendant, Irving Birnbaum, stands convicted after trial by jury, together with seventeen other codefendants, of conspiracy to violate Federal Narcotics Laws, 21 U.S. C. 173, 174; 26 U.S.C.470.5(a) 7237 (b). The defendant has been sentenced to be imprisoned for a term of five years.

The defendant appealed and during the period of time from sentence to the present has remained on bail pending appeal.

The Supreme Court of the United States of America on November 11, 1975, denied certiorari to Mr. Birnbaum and the others on petitions No. 74-1445 and 74-6411.

This application is brought pursuant to Rule 35 of the Federal Rules of Criminal Procedure, and is within sixty days of the date of the last Appellate determination.

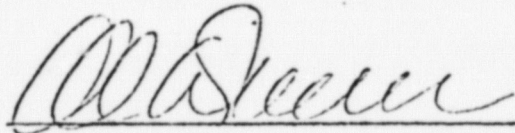
Subsequent to the indictment of the defendant Birnbaum, the applicable statutory provisions were changed so that it became permissible to sentence a defendant in a narcotics case

to a period of time less than five years. At the time of these crimes, the statute provided for a minimum of five years sentence. It is respectfully submitted that the defendant is worthy of a lesser sentence than that imposed, and a hearing is respectfully requested for the purpose of determining what that sentence should be.

Your deponent has observed that Mr. Birnbuam in the past two and one-half years has begun and operated a trucking company in his own name at 232 Madison Avenue, New York, N. Y., has supported himself and contributed to the support of his ailing mother. During that period of time, as far as your deponent is able to determine, the defendant has not been involved in any criminal activities and has, in fact, rehabilitated himself to an impressive degree. The defendant advises that until the time of the decision by the Supreme Court, he was planning to marry and has now postponed those plans.

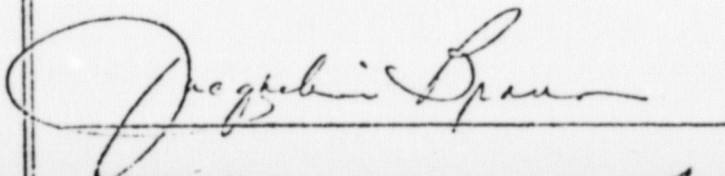
In the alternative, it is respectfully requested that the Court modify the sentence of the defendant by sentencing him pursuant to Section 4208(a)(2), so that the defendant will become eligible for parole at such time as the Board of Parole shall determine without regard to a minimum of time of incarceration.

The defendant herein has not previously requested the relief requested herein.

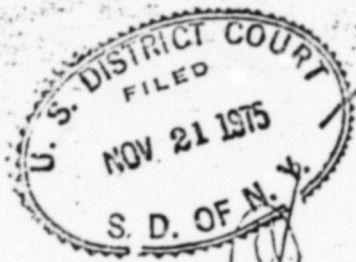


Sworn to before me this

21st day of November, 1975.



JACQUELINE BRAUN
NOTARY PUBLIC, State of New York



71 Criminal 1169 (nr)

Motion to reduce or modify
sentence is denied. Defendant
shall surrender on December 15,
1975

So Ordered
11/11/75

Milton Pecos
U.S.D.J.

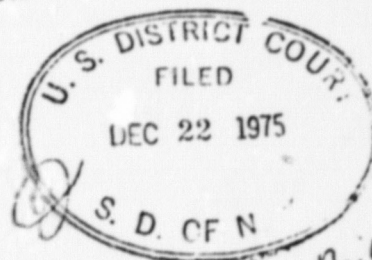
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E. G. [unclear]
Notice sent
12/29/75 [unclear]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA

-v-

71 Cr. 1169

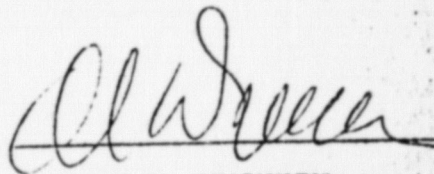
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IRVING BIRNBAUM,

Defendant,

NOTICE IS HEREBY GIVEN that IRVING BIRNBAUM, the defendant hereby appeals the decision of Hon Milton Pollock, made November 21, 1975 and entered November 23, 1975 denying his motion for reduction or modification of his sentence but not from so much of the decision which granted him additional time to surrender thereunder, to the United States Court of Appeals for the Second Circuit.

December 15, 1975


MORROW D. MUSHKIN

TO: IRVING BIRNBAUM
DEPT. AT
5519 AVENUE H
BROOKLYN, NEW YORK

Attorney for the Defendant
600 Old Country Road
Garden City, New York 11530

Telephone 516 747-8522

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STATE OF NEW YORK)
)
COUNTY OF NASSAU) SS.:

JANE RYDER, being duly sworn, deposes and says:

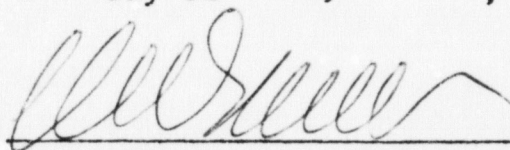
That she is secretary to Morrow D. Mushkin, Esq., the attorney for the above named Appellant herein. That on the 24th day of May, 1976, she served the within Appellant's Appendix in triplicate Brief in triplicate and/ upon Paul J. Curran the attorney(s) for the above named Appellee by depositing a true copy of the same securely enclosed in a post-paid wrapper in the Official Depository maintained and exclusively controlled by the United States at No. 600 Old Country Road, Garden City, New York, directed to said attorney(s) for the Appellee at No. Foley Square, New York New York, that being the address within the State designated by him for that purpose upon the preceding papers in this action, or the place he then kept an office between which places there then was and now is a regular communication by mail.

That your deponent is over the age of 21 years.



SWORN to before me this

24th day of May, 1976



MORROW D. MUSHKIN
Notary Public, State of New York
No. 30-8084100
Qualified in Nassau County
Commission Expires March 30, 1977